IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 39 OF 2005

M/S. Venus Steel Products,
Through its Proprietor,
Shri Jaime S. Lazaro,
Aged about 75 years,
R/O H.No.901, Belavista,
Raia, Salcete, Goa. ... Petitioner

versus

1. Michael Pinheiro
(since deceased),
through his widow,
Smt.Helen Pinheiro,
Major in age,
H.No.49, Pinheiro Building,
Damodar Housing Society,
Aquem Alto, Margao, Goa.

2. State(through Public
Prosecutor) ... Respondents

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. D. Pangam, Advocate for the Respondent No.1.

Ms. W. Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 19TH JANUARY, 2006.

ORAL ORDER

Heard Mr. Arun Bras De Sa, the learned Counsel on behalf of the petitioner and Mr. D. Pangam, the learned Counsel on behalf of the respondent no.1.

2. The petitioner is an accused who has been convicted by the learned J.M.F.C., Margao, in C.C.No.207/N/96/F by Order dated 31-12-2001 under Section 138 of the Negotiable Instruments Act, 1881 and which conviction and sentence has been maintained by the learned Assistant Sessions Judge, Margao, in Criminal Appeal No.5/2002 by Judgment/Order dated 17-1-2003. The petitioner approached this Court in a revision against the said Orders of conviction/sentence but the same came to be dismissed for non prosecution on 21-4-2004 after the petitioner did not appear before this Court on 20-2-2004, 12-4-2004 and 20-4-2004. Against the said dismissal of revision application, the petitioner preferred an application to this Court styling it to be an application under Section 482 of the Code of Criminal Procedure, 1973(Code, for short) and the same came to be dismissed by Order dated 6-5-2005.

3. The petitioner has now filed the present petition styling it to be a Criminal Writ Petition.

4. Mr. Arun Bras De Sa, the learned Counsel on behalf of the petitioner submits that a Writ Petition against the Order dated 21-4-2004 passed in Criminal Revision Application filed by the petitioner before this Cort would otherwise be maintainable under Article 226 of the Constitution of India on the ground that the petitioner's right under Article 14 of the Constitution is violated.

5. On the other hand, it has been submitted by Mr. D. Pangam, the learned Counsel on behalf of the respondent no.1 that the present petition is nothing short of an abuse of the process of the Court.

6. After filing of the present petition, the petitioner sought time, from time to time, to engage an advocate and then the advocate engaged by the petitioner was also given sufficient time to study the maintainability of a Criminal Writ Petition against the very Order of this Court passed in Criminal Miscellaneous Application No.6/2005 filed under Section 482 of the Code but nothing has been produced on behalf of the petitioner to support that a Criminal Writ Petition would be maintainable against the very Order of this Court before this Court. Mr. Arun Bras De Sa has submitted that this Criminal Writ Petition be placed before the Division Bench. I am not inclined to accede to the said request. If at all, the

petitioner is entitled to, under the law, to file a Criminal Writ Petition against the Order of a Single Judge dismissing a petition filed by him under Section 482 of the Code before the Division Bench of this Court then the petitioner would be at liberty to do so. At present, I find that this petition is devoid of any substance and prima facie it appears to be nothing short of an abuse of the process of the Court. Accordingly, the same is hereby dismissed.

N. A. BRITTO, J.

RD